



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Dryer et al.

Serial No.: 09/257,208

Group Art Unit: 2174

Filed: February 25, 1999

Examiner: Sax, S.

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Technology Center 2100

For: METHOD AND SYSTEM FOR REAL-TIME DETERMINATION OF A
SUBJECT'S INTEREST LEVEL TO MEDIA CONTENT

Honorable Commissioner of Patents
Washington, D.C. 20231

DECLARATION UNDER RULE 37 C.F.R. § 1.131

Sir:

We, D. Christopher Dryer, Myron Dale Flickner, and Jianchang Mao, do hereby state that:

- 1) We are the inventors of the above-identified application.
- 2) The method and system for real-time determination of a subject's interest level to media content was known to us earlier than March 23, 1998, as shown in the enclosed memorandum (Exhibit 1). The effective date of the memorandum (Exhibit 1) is earlier than March 23, 1998 and the date thereof has been redacted.
- 3) The contents of the enclosed memorandum (Exhibit 1) have been incorporated into the specification of the present invention, upon which claims 1-61 are based. For example, the memorandum paragraph (e.g., A) beginning with the words "[i]nformation technologies" can be found in the specification (e.g., on page 2, lines 2-11).

The memorandum paragraph (e.g., B) beginning with the words "[t]he problem of determining" can be found in the specification (e.g., on page 2, lines 12-23).

The memorandum paragraph (e.g., C) beginning with the words "[t]he interpersonal means of interest level detection" can be found in the specification (e.g., on page 3, lines 1-14).

- 4) Regarding the present invention, the memorandum paragraph (e.g., D) beginning with the words "[o]ur invention addresses this problem" can be found in the specification (e.g., on

page 5, lines 21; page 5, lines 1-3 and 14-21; page 9, line 1; and page 10, lines 1-11). Further, the memorandum paragraph (e.g., D) is also defined by at least claim 1, defining “*detecting to what a subject is attending*” and “*measuring a subject’s relative arousal level*”; in claim 2, defining “*determining a target to which a gaze of the subject is directed*”, and in claim 4 defining “*determining whether the subject is attending to the media content*”.

The memorandum paragraph (e.g., E) beginning with the words “[n]ext, a person’s relative arousal level is assessed” can be found in the specification (e.g., on page 7, lines 4-11; and page 12, lines 10-20). The memorandum paragraph (e.g., E) is also defined by at least claim 5 (e.g., and substantially similarly by claims 8, 16, 19, 27, 30, 38, 41, and 49), defining “*measuring the subject’s facial gestures*”.

The memorandum paragraph (e.g., F) beginning with the words “[b]y combining data about attention” can be found in the specification (e.g., on page 7, lines 12-16; and page 22, lines 10-19). The memorandum paragraph (e.g., F) is defined by at least claim 11 (e.g., and substantially similarly by claims 22, 23, 33, 34, 44, 45, 52, 53, and 54) defining “*said level of interest produced provides relevance feedback associated with said subject*” and “*combining information regarding said subject’s arousal level and attention to infer a level of interest*”.

The memorandum paragraph (e.g., G) beginning with the words “[o]ne use of this device would be for an information presentation technology to receive interest level data” can be found in the specification (e.g., on page 20, lines 6-10; and page 22, lines 10-19). The memorandum paragraph (e.g., G) is also defined by at least claim 11 (e.g., and substantially similarly by claims 22, 33, 44, 45, and 52) defining “*said level of interest produced provides relevance feedback associated with said subject*”.

5) The above clearly evidences a completion of the invention in this country before the filing date (e.g., March 23, 1998) of Application Serial No. 09/047,160 on which U.S. Patent No. 6,212,502B1 to Ball et al. is based.

6) In the alternative, we declare that the claimed invention was conceived prior to March 23, 1998 (e.g., as shown by the attached Memorandum (Exhibit 1) having a date (now redacted) prior to March 23, 1998) and, coupled with due diligence from a date before March 23, 1998, that the invention was constructively reduced to practice on February 25, 1999. That is, disclosure materials were forwarded by Ray Strimaitis, Esq. of International Business Machines Corporation to Attorney Sean M. McGinn on June 22, 1998; a teleconference was conducted with inventor Myron Flickner on July 9, 1998; an estimate for preparation of a patent application was forwarded from Attorney Sean M. McGinn to Ray Strimaitis, Esq. on July 10, 1998;

additional disclosure materials were sent from inventor Myron Flickner to Attorney Sean M. McGinn, dated August 17, 1998; a draft Application sent to inventor Myron Flickner from Attorney Sean M. McGinn on November 13, 1998; comments were forwarded from inventor Myron Flickner on November 25, 1998; on or about December 23, 1998, inventor Myron Flickner's comments were received on the first draft of the Application; a second draft application was sent to inventor Myron Flickner on December 28, 1998 via Express Mail, and the second draft was also transmitted via facsimile on January 7, 1999; a drawing was forwarded by inventor Myron Flickner to Attorney Sean M. McGinn on January 14, 1999; a final draft application was sent to inventor Myron Flickner from Attorney Sean M. McGinn on January 22, 1999; and the application and the executed formal papers were filed on February 25, 1999.

7) The facts above in 5) clearly show a completion of the invention in the U.S. before March 23, 1998. Alternatively, the facts in 6) above show a conception of the invention, prior to March 23, 1998, and due diligence from just before March 23, 1998 to the filing date (i.e., the constructive reduction to practice) of the application on February 25, 1999.

We hereby declare that all statements made here of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Further declarants sayeth not.

Date:

D. Christopher Dryer

Date:

Myron Dale Flickner

Date:

Jinchang Mao